

# THE WATCHDOG

A Periodic Newsletter from  
The Office of the United States Trustee - Region 16

December 9, 2002  
Issue No. 11

## PETITION PREPARER NEWS

### Bait and Switch

Petition preparers Kenneth Settle, James Sullivan aka James Roberts, Gloria "Emi" Phillips and Legal Aid Action advertised \$99 bankruptcy filings in local free newspapers and then used high-pressure sales tactics to charge up to \$650 per petition to low-income debtors. The petition preparers failed to disclose their social security numbers on petitions, apparently forged the name of an attorney on petitions, collected cash from debtors for court filing fees, falsely represented that an attorney was on the premises, and engaged in the unlawful practice of law by giving legal advice. The debtors were often disabled and/or elderly persons living on low monthly incomes. In the case of one senior citizen who used their services, Judge Mund permanently enjoined the petition preparers from acting as bankruptcy petition preparers and ordered fines of \$2,500 and disgorgement of \$549 to the debtor. In the six months prior to the hearing, the Woodland Hills office filed thirty-four Section 110 motions, obtaining over \$25,000 in ordered fines and over \$6,000 in disgorgement orders against Legal Aid Action.

### The Hazards of Accepting Filing Fees

Judge Jury fined petition preparer Gloria Ortiz \$500 for violation of 11 U.S.C. § 110(g), collecting filing fees from the debtors. The Court ordered her to disgorge the \$200 fee she received from the debtor. The Court also enjoined her from preparing

bankruptcy filings in the Central District of California for explaining the differences between Chapter 7 and Chapter 13 bankruptcy filings and for giving advice regarding exemptions.

Judge Goldberg fined petition preparers Mindy Morrison and Frank Mendoza \$500 and \$250, respectively, for accepting filing fees from the debtors and also granted injunctions against them for giving advice regarding exemptions.

Judge Jury enjoined petition preparer Nicholas Ripoly from preparing any further petitions. Among other things, Ripoly had collected the filing fee from a debtor in cash. In another case, he received \$600 to assist a debtor while only disclosing a receipt of \$200. Judge Barr ordered disgorgement of \$400 and fined Ripoly \$500 for the false fee he reported on the Disclosure of Compensation of Bankruptcy Petition Preparer form under penalty of perjury.

### Injunctions

Judge Goldberg granted the U.S. Trustee's requests for injunctions against petition preparers Rosalind France, Penny Laird, Juan Miranda and Donna Nelson because of the unauthorized practice of law. Their activities included giving advice regarding exemptions and accepting the filing fee in any form other than certified funds payable to the United States Bankruptcy Court.

Judge Russell permanently enjoined Alvenus Neptune from acting as a bankruptcy petition preparer in any bankruptcy court in any district in the



United States as a result of a default judgment on a complaint filed by the U.S. Trustee. The basis of the complaint was Neptune's failure to comply with three orders previously obtained by the U.S. Trustee that required Neptune to pay fines and/or disgorge fees for violations of § 110.

---

### **Money Order Kiting**

A debtor gave Sandra Bell of Liberty Paralegal a \$200 money order payable to the U.S. Bankruptcy Court for his bankruptcy filing fee. He also gave Bell \$160 to prepare his petition. Bell never filed his petition and the money order was used to file another debtor's bankruptcy case. Michael Anthony Bell, who used the same address as Sandra Bell, filed this second debtor's petition. Judge March found that the misuse of the filing fee was a fraudulent, unfair, and deceptive act, ordered Sandra Bell to return \$360 to the first debtor, and fined Sandra Bell, Michael Anthony Bell, Liberty Paralegal, and Anthony & Associates (a company owned by Michael Bell).

---

### **Nondisclosure**

Petition preparer Shaleen Baze failed to disclose her fees received or her identity. She claimed she was not aware of Section 110 or the responsibilities of a bankruptcy petition preparer. Judge Alberts ordered disgorgement of her \$250 fee and enjoined her from acting as a petition preparer without further order of the Court.

---

### **Overcharging**

Petition preparer Ramon Chavarria charged the debtor \$800 instead of the maximum allowable compensation of \$200. Judge Jury ordered disgorgement of \$800, fined him and Professional Services Center \$500, and enjoined Chavarria from preparation of any bankruptcy documents.

---

### **Petition Preparer to attend BPP Seminar**

Petition preparer Yvonne Hasagawa stipulated to refunding the debtor \$200, to engaging no further in the unauthorized practice of law, and to attending a

Bankruptcy Petition Preparer seminar on October 8, 2002 in Riverside sponsored by the Office of the U.S. Trustee.

---

### **Predated Petitions**

On March 1, 2002, petition preparer Len Faanes stipulated to an order permanently barring him from acting as a petition preparer. With respect to petitions already prepared by Faanes but not yet filed, the U.S. Trustee stated it would review those cases when filed. A number of those petitions that were subsequently filed appeared to be backdated, in some cases, by over a year. Judge Barr found that Faanes had violated the stipulation and imposed a \$5,000 fine. Judge Ryan dismissed two cases on the theory that they could not be accurate. The debtors had used Faanes, while enjoined, to prepare their petitions and the bankruptcy documents predated the filing by over a year.

---

### **Sanctions, Fines, Disgorgements**



For failure of enjoined petition preparer Juan Miranda to pay a \$200 Court-ordered disgorgement and a \$500 fine, Judge Jury ordered an additional sanction of \$3,000 and \$500 to the United States Trustee for the costs of bringing the Motion for the Order to Show Cause.

---

### **Unauthorized Practice of Law**

Judge Russell issued findings that Pex Aves, a petition preparer, engaged in the unauthorized practice of law. The debtor provided details connecting Aves to this bankruptcy filing. The attorney, whose name was on the petition, said he neither signed nor authorized his signature on the bankruptcy documents.

The Court found that Aves had several violations of § 110, including failing to sign the bankruptcy documents, failing to disclose his identifying number, failing to disclose his fees, using the term "legal" in his advertising, and collecting the filing fee. The Court determined that he advised the debtors on the differences between Chapters 7 and 13 and where



to file bankruptcy. Aves also completed the exemptions for the debtors who testified that they did not know what an exemption meant. The Court found that Aves committed a fraudulent, unfair, and deceptive act, fined him \$2,000, and ordered that he return another \$3,000 in fees to the debtors.

The Court also issued findings regarding attorney John Nordblom, whose name appeared on the petition, including:

- the attorney lent his name to a joint enterprise with the preparer to engage in the practice of law;
- the attorney was hired and paid by the preparer to appear at the § 341(a) meetings;
- the preparer testified that he was to split a fee with the attorney for the debtors' case.

Petition preparer Connette Blalock prepared Chapter 7 petitions based on what the debtors "wanted to keep." She used a computer program that elected exemptions and assigned the appropriate code section from the data inputted from a debtor's worksheet. Judge Jury determined Blalock's activities involved the unauthorized practice of law and ordered an injunction against her.

Petition preparer Arthur Carter incorrectly advised his client that she would be able to keep her house when filing her Chapter 7 case. Judge Barr ordered Carter to disgorge his \$200 fee and sanctioned him \$750 for engaging in the unauthorized practice of law.

Judge Jury permanently enjoined petition preparers Richard and Yvonne Green and their company High Desert Document Preparers from engaging in the unauthorized practice of law, which included the use of their document preparation questionnaire.

Kulla-Mandiri M. Shukla, petition preparer, advised the debtor as to exemptions and explained the differences between Chapters 7 and 13 bankruptcies.

Shukla also charged \$200 for bankruptcy documents that were handwritten and erroneously completed. Judge Smith found that Shukla engaged in the unauthorized practice of law, ordered all fees returned to the debtor, and fined Shukla for violations of §110.

Petition preparer Eme Chuku Nkugba made several decisions for the debtor including under which chapter the debtor should file. Judge Zurzolo found that Nkugba engaged in the unauthorized practice of law, prohibited him from preparing or assisting in the preparation of bankruptcy documents, and fined him for § 110 violations. The Court also ruled, as a matter of law, that the acceptance by the preparer of a money order payable to the U.S. Bankruptcy Court for the filing fee was a violation of § 110(g).

Judge Donovan issued findings that Ziinet.com, Frankfort Digital Services, Ltd., and Henry Ihejirika engaged in the unauthorized practice of law. Frankfort Digital Services operates the Ziinet.com website. Among the facts supporting the UPL finding were: 1) the preparers chose the debtor's exemptions, 2) the website contained specific and extensive legal advice about the bankruptcy process, 3) the website created an aura of expertise that misled the public, 4) the preparers advised the debtor, as well as others, to conceal their social security number information on their bankruptcy papers and advised the debtors how to manipulate the bankruptcy process, and 5) the website provided advice on how to abuse the bankruptcy code provisions and to gain an unfair advantage. The Court fined the preparers \$4,000 and ordered the return of the debtor's fees for services.



### **Additional Cases**

Since our last "Watchdog," Los Angeles has successfully motioned for disgorgements in 13 cases and fines in 28 cases involving petition preparers. Marci Knighten and Albert G. Ortiz were fined twice during this period.



## DEBTOR I.D. PROGRAM

### Los Angeles

On motion by the U.S. Trustee, the Bankruptcy Court dismissed the case of Jaime Pedroza based on his use of a false Social Security Number (SSN) on his petition. The U.S. Trustee's investigation revealed that the SSN was used in an unrelated Chapter 7 case filed in March 2001. Pedroza subsequently testified that he had purchased the number four years ago for \$50 and had used it to secure employment as well.



Debtor Calvin Ellis failed to disclose his correct SSN, failed to appear at the last three continuances of the § 341(a) creditors' meeting, filed a case under a false SSN, failed to disclose his interest in two parcels of real property, and failed to disclose two prior filings as well as a related case of a co-owner in one of the parcels of real property. The debtor received a discharge of his case on December 10, 2001. However, upon review of the case and discovery of the various issues, the U.S. Trustees filed an application for an Order to Show Cause requesting that the discharge be vacated and the case dismissed with a bar against re-filing. Judge Donovan dismissed the case with prejudice and barred the debtor from filing any future petitions under all available Chapters within the U.S. Bankruptcy Code without first obtaining permission from the Bankruptcy Court.

In a similar case, Judge Russell granted the U.S. Trustee's motion to vacate the discharge issued to Juan Ramirez and to dismiss the case with a 180-day bar to re-filing for failure to provide proof of SSN and failure to appear at four continued 341(a) meetings.

### Santa Ana

Judge Alberts heard the first Santa Ana U.S. Trustee motion for failure to provide verification of a SSN at a § 341(a) meeting of creditors on August 7, 2002 in the case of Ezequiel Rios. The Motion to Dismiss Case for Failure to Provide Proof of Identity

and/or to Correct Social Security Number was filed after the U.S. Trustee received a referral from trustee James Joseph. Rios did not respond to the motion and the case was dismissed on August 7, 2002.

On September 23, 2002, the District Court for the Central District of California reversed the U.S. Bankruptcy Court and ordered a revocation of the discharge of bankruptcy petition preparer Ilda Valencia. While seeking sanctions against Valencia, the U.S. Trustee discovered that she and her husband, Juan C. Guadarrama, had previously received a Chapter 7 discharge of more than \$58,600 in credit card debt. In addition, Valencia had used a SSN on her bankruptcy petition that differs from the one used as a petition preparer. The U.S. Trustee confirmed that the number Valencia used on her bankruptcy documents was fabricated.

## ATTORNEY DISGORGEMENTS, SANCTIONS, AND SUSPENSIONS

### Los Angeles

○ The Disciplinary Panel of the Bankruptcy Court suspended attorney James Lia from practicing before the Court for one year. The Panel, consisting of Judges Naugle, Barr and Robles, concluded that Lia violated the Rules of Professional Conduct. The Panel concurred with the findings of fact Judge Zurzolo issued on May 1, 2002. These facts included aiding a non-attorney in the unauthorized practice of law; forming a partnership with a non-attorney, whose purpose was the practice of law; sharing legal fees with a non-attorney; failing to adequately supervise the work of a non-attorney; failing to deposit into a trust account all funds held for the benefit of a client; allowing his name to be used by a non-attorney that enabled that non-attorney to charge an unconscionable fee; and misrepresenting to the Court the amount he received and his arrangement with the non-attorney. The Panel concluded that discipline was required based on several factors involving the serious violations of the disclosure rules, the failure by Lia to fulfill the duties of an attorney for the debtor, and the



participation in a "disguised typing service" that enabled higher fees to be extracted from alleged clients. In mitigation, the Court found that Lia ceased the objectionable business practices, complied with the disgorgement order, had no prior record of discipline in his many years of practice, accepted responsibility, and showed remorse for his actions. The referral to the Disciplinary Panel was a result of the U.S. Trustee's Motion for an accounting and disgorgement.

### Riverside

O An attorney filed a Chapter 13 bankruptcy petition without the debtor's knowledge or permission. Apparently, the debtor purchased real property which his attorney managed as part of a possible joint venture. After learning that a foreclosure sale was imminent, the attorney prepared the Chapter 13 filing, and, by his admission, signed the debtor's name to the documents. Judge Jury sanctioned the attorney \$1,500 for forging the debtor's signature on the documents and granted \$250 in costs to the Chapter 13 trustee. The Judge also referred the attorney to the Court's disciplinary proceedings, as provided under General Order 96-05, and to the State Bar of California.



O Judge Goldberg sanctioned debtors' counsel \$200, payable to the U.S. Trustee. When counsel failed to timely pay the sanction, the U.S. Trustee sought and obtained an Order to Show Cause regarding additional sanctions as well as a referral to the Court's

disciplinary proceedings. Debtors' counsel failed to respond in writing and failed to appear at the hearing. Judge Goldberg sanctioned counsel an additional \$500 and ruled that if all sanctions were not paid within thirty days, the U.S. Trustee could prepare a declaration and a referral to the Court's Disciplinary Hearing Panel.

O Debtor's counsel had specifically agreed to represent debtor at the first meeting of creditors but did not appear at the meeting. He also failed to respond to the U. S. Trustee's motion to determine

whether compensation paid to counsel was excessive and failed to appear at the hearing on the motion. Judge Carroll ordered disgorgement of \$260 to the debtor.

### Santa Ana

O On August 9, 2002, approximately two months after being sanctioned \$500, an attorney filed another bankruptcy case which contained inaccuracies, including undisclosed prior bankruptcies. The U.S. Trustee filed a motion to dismiss and requested sanctions against the attorney. In the interim, the attorney filed yet another inaccurate bankruptcy case. Judge Ryan sanctioned the attorney \$500 for the second bankruptcy filing and dismissed the case with prejudice. The third case resulted in Judge Ryan's sanctioning the attorney \$1,000 and dismissing the case with a 180-day bar against re-filing.

O A debtor filed a Chapter 7 bankruptcy with the assistance of counsel. The debtor's case appeared on the routine duplicate social security number report. As the debtor had not listed the previous bankruptcy, nor scheduled any property, the U.S. Trustee filed a motion to dismiss and requested sanctions against the attorney as counsel should have read the bankruptcy documents prior to filing. Counsel amended the schedules by adding personal property and requested sanctions against the U.S. Trustee for filing an unnecessary motion. Judge Alberts denied the motion to dismiss based on the debtor's inability to read and denied all motions for sanctions. He disallowed \$800 in fees and rebuked counsel for having made the motion for sanctions against the U.S. Trustee.

O Debtor's counsel failed to respond to the U.S. Trustee's inquiries for information regarding whether the debtor's filing involved substantial abuse. The U.S. Trustee responded by filing a §707(b) motion. After the debtor ultimately provided the information requested, the U.S. Trustee sought sanctions against the attorney. Judge Ryan ordered the attorney to disgorge \$300 in fees the debtor paid for defense against the U.S. Trustee's motion. Judge Ryan also advised debtor's counsel that failure to cooperate in the future would result in sanctions.



## SECTION 727

Joseph R. Kishkek, a jeweler, filed a voluntary Chapter 7 petition seeking to discharge \$71,471 in unsecured debt. Although the debtor's filing survived an initial screening, the U.S. Trustee was subsequently advised that a judgment had been obtained against the debtor for replacing a diamond with a zirconium on jewelry entrusted to him for repair. A further review raised questions as to the nature of much of the debt listed on the bankruptcy schedules. The debtor alleged that a cousin had perpetrated a credit card scheme from the debtor's business location and then fled to Lebanon. Other issues were raised as to the debtor's identity and the Department of Motor Vehicles was contacted. After the debtor refused to submit to a Court-ordered examination or provide any additional documentation, the U.S. Trustee filed a § 727 complaint to deny the debtor's discharge and obtained a default judgment.

## SUBSTANTIAL ABUSE FILINGS

### Los Angeles

⇒ The U.S. Trustee filed a § 707(b) motion against David King who sought to discharge a total of \$46,706 in debt, including \$35,138 of unsecured debt. He asserted a monthly disposable income of \$3,511 and expenditures of \$2,730. He included an unspecified deduction of \$433.33 in Schedule I and \$600 for food in Schedule J. Judge Robles dismissed the case, finding that the debtor could repay approximately 72% of the unsecured debt within three years.

### Riverside

⇒ Debtor Peter Bauers sought to discharge \$11,895 in unsecured debt. However, the schedules demonstrated excess monthly income that would allow the debtor to pay 68% to his unsecured creditors over three years through a Chapter 13 plan. He failed to respond to the U.S. Trustee's motion or appear in opposition. Judge Goldberg granted the motion to dismiss.

⇒ Schedules I and J filed by Eugene and Dorris Brown revealed sufficient income to fund a Chapter 13 plan over a three-year period. After learning that the U.S. Trustee was seeking a dismissal without prejudice, the debtors chose not to oppose the motion and the case was dismissed.

⇒ Willie and Patricia Brown sought to discharge \$5,280 of priority debt and \$28,544 of unsecured debt through a Chapter 7 bankruptcy. The U.S. Trustee brought a Motion to Dismiss pursuant to 11 U.S.C. § 707(b) on the basis that the debtors failed to schedule their savings, TSP accounts, and loan payments, and understated their income based upon submitted payroll remittance advances. The U.S. Trustees determined the creditors could pay 142% of their debt over a period of three years. The pro se debtors failed to respond to the motion or appear at the hearing. Judge Goldberg dismissed their case.

⇒ Debtor Jose Castaneda listed no unsecured indebtedness in his schedules. At the hearing on the U.S. Trustee's motion to dismiss, the debtor admitted that he had filed to avoid two judicial liens totaling \$67,299. The debtor also admitted to having \$388 per month in excess income which could pay \$13,968 or 20.77% of the lien amounts over 36 months. However, the U.S. Trustee alleged the debtor could pay \$20,975 or 31.17% of the lien amounts over this same period of time. Rather than face dismissal, the debtor chose to convert his case to one under Chapter 13.

⇒ The U.S. Trustee brought a motion to dismiss the case of Dwayne and Tracey Conedy. The debtors failed to disclose their interest in a 401(k) plan and listed a fairly high monthly expenditure of \$462 for an auto loan, yet listed only a 1985 Toyota in their bankruptcy schedules. The debtors also drastically overstated expenses. Upon adjustment of these items, the debtors had the ability to repay 100% of their unsecured debts over a period of three years. Additionally, the U.S. Trustee brought a motion requesting the determination of the appropriate amount of attorneys' fees, considering the inaccuracies in the filed documents. Judge Jury ordered the case dismissed and debtor's counsel to disgorge \$400 in excess attorneys' fees to the debtors.



⇒ Andrew Johnson sought to discharge \$42,507 of unsecured debt through a Chapter 7 bankruptcy. The U.S. Trustee filed a Motion to Dismiss under § 707(a) and (b) based on the debtor's overstatement of expenses and understatement of income. Among several discrepancies, he listed an expense of \$852 per month for a 401(k) loan but failed to substantiate that this was in fact a loan. He also understated his income by about \$850 per month. After adjusting for these and other issues, the debtor could pay his creditors in full over a three-year period. The debtor amended his schedules but when Judge Goldberg indicated he was going to dismiss the case on September 9, 2002, the debtor's attorney converted the bankruptcy to one under Chapter 13. In addition, the U.S. Trustee brought a motion to determine whether attorneys' fees were excessive. Judge Goldberg ordered debtor's counsel to disgorge \$200 of the \$1,200 attorney's fee to the debtor.



⇒ Carolina Soto's bankruptcy schedules indicated that she had sufficient disposable income to fund a 68% Chapter 13 plan over three years. The debtor pointed out that she had substantial arrearages on her mortgages and therefore would

only be able to fund a very low percentage plan. At the request of the debtor and the U.S. Trustee, Judge Goldberg varied from the usual practice of discouraging low percentage Chapter 13 plans and converted the case to one under Chapter 13.

### **Santa Ana**

⇒ A single man and recent law school graduate, making over \$90,000 per year, filed a voluntary pro per Chapter 7 petition. At his § 341(a) meeting of creditors, the debtor admitted he had not subtracted his withholding correctly. Given this correction, the debtor would be able to pay all of his unsecured creditors with a substantial amount of funds left over. The U.S. Trustee filed a § 707(b) motion. The debtor's response indicated that he had made a mistake and agreed to pay a \$250 sanction.

⇒ In the Chapter 7 case of Edward Cookson, the debtor was seeking to discharge unsecured debt of

\$41,306. The trustee advised the Office of the U.S. Trustee that the debtor's income appeared low on the bankruptcy schedules as payroll stubs indicated a tax rate for a much higher income. The U.S. Trustee filed a Motion to Dismiss based on the debtor's actual ability to pay a significant amount of his unsecured debts. The debtor instead converted his case to one under Chapter 13.

⇒ Leslie Chan Dotson filed a Chapter 7 petition listing \$126,066.89 in unsecured debt. During his examination at the § 341(a) meeting of creditors, the debtor admitted to numerous errors and omissions in his bankruptcy documents which he blamed on bankruptcy petition preparer Vic Mann. The U.S. Trustee contacted Mann who faxed a copy of the information sheet he received from the debtor. A motion to dismiss was filed under § 707(a) and (b). The debtor retained counsel, substantially amended his schedules, and again blamed Mann for any previous inconsistencies. Based on the information sheet from Mann, the U.S. Trustee filed a § 727 adversary action. The debtor eventually stipulated to waiving his discharge and converted his case to a Chapter 13 bankruptcy. Judge Alberts approved the stipulation.

⇒ Sharon Lynn Egan filed a Chapter 7 bankruptcy listing \$499,651 in credit card debt. She showed no real property and only \$1,185 in personal property on her bankruptcy schedules. At her § 341(a) meeting of creditors, the debtor stated that the credit card debt was for "every day living expenses" and not luxury items. The U.S. Trustee subpoenaed her credit card statements. Within six months of filing, the debtor bought \$136,000 of merchandise from jewelry retailers, spent \$51,000 at Costco during a two-week period, and made at least six bad check payments totaling \$144,000. Judge Barr granted the U.S. Trustee's motion to dismiss the case with prejudice and barred the debtor from receiving a discharge in a later bankruptcy case of her debts or obligations existing at the time of this filing.

⇒ Jennifer Fitzgerald filed a Chapter 7 petition seeking to discharge \$15,725 of consumer debt. The U.S. Trustee filed a motion to dismiss based on the debtor's bankruptcy papers and statements she made at her § 341(a) meeting of creditors, both of which indicated that she had understated her



expenses. She filed amended schedules increasing her expenses but did not file a written response to the U.S. Trustee's motion or appear at the hearing. Judge Alberts dismissed her case.

⇒ Barbara Ingram filed a Chapter 7 petition indicating \$125,169 in unsecured debt on her bankruptcy schedules. The U.S. Trustee filed a Motion to Dismiss based on several adjustments, including the elimination of a \$245 monthly pension payment. The debtor agreed to convert to a Chapter 13 case.

⇒ Elizabeth Reith filed a Chapter 7 petition indicating on Schedule J a food expense of \$1,862 for a family of four. The U.S. Trustee filed a motion to extend the § 707(b) deadline and initiated an inquiry as to the reasonableness of the food expense. Faced with this inquiry, the debtor voluntarily converted to Chapter 13.

⇒ Debtor Steven Wolff sought to discharge \$52,000 of credit card debt. Although no income was listed for his non-filing spouse, testimony at the § 341(a) meeting indicated that his spouse did have income and that 65% of the unsecured debt could be paid in 36 months by factoring in the spouse's income. The U.S. Trustee filed a § 707(b) motion and the debtor's case was dismissed.

### **Woodland Hills**

⇒ James Cunha had unsecured debt of over \$15,000 and a net monthly disposable income of \$395, which could generate over \$12,700 in payments over a three-year period under a Chapter 13 Plan and pay off 82% of the unsecured claims. Judge Riblet granted the dismissal.

⇒ Judge Lax entered a seven-page written memorandum decision granting the U.S. Trustee's motion to dismiss the case of Steven and Sharon Drell under § 707(b). Dr. Drell earned over \$250,000 per year, and Judge Lax found that the debtors had \$2,157 per month excess disposable income to fund a Chapter 13 plan while maintaining a very comfortable living style. The unsecured debt totaled \$273,094. As permitted by the Court's Order, the debtors converted their case to Chapter 13 within ten days.

⇒ In the Chapter 7 case of James and Tammy Hinds, it was determined that if the debtors were to repay only the amount they currently devoted to their TSP retirement account, they would have sufficient income to fund a Chapter 13 plan over a period of three to five years. Judge Greenwald dismissed the case.

⇒ Leo Moreno Ortiz claimed net disposable income of only \$21.68 per month. However, the debtor had included in his schedules over \$400 in retirement deductions and over \$100 per month in credit union transfers, giving a net disposable income of more than \$570 per month. Judge Riblet granted the U.S. Trustee's Motion to Dismiss on the grounds that the debtor could repay 100% of his unsecured claims over a three-year period under a Chapter 13 Plan.



⇒ Judge Riblet dismissed the case of John and Celine Hanes on the finding that the debtors could pay 66% of their unsecured debt under a Chapter 13 Plan.

## **REPEAT FILERS**

**G** In his second bankruptcy case, Robert Borgese failed to disclose a number of items including aliases, prior cases, certain assets, and certain liabilities. He also failed to disclose that he was on probation at the time of filing. Angry creditors brought this fact to the attention of the U.S. Trustee who discovered additional creditors not listed in the bankruptcy. The Murrieta Police Department arrested Borgese, charging him with 11 counts of fraud. Borgese's scheme apparently was taking deposits for the building of cabinets without the intention of ever building them. On August 20, 2002, Judge Naugle dismissed his bankruptcy with prejudice.

**G** Serial filer Shana Mildred Gavone Mayfield filed her fourth bankruptcy in three years and failed to disclose all of her previous filings. The U.S. Trustee filed a motion and the debtor's case was dismissed by Judge Barr with prejudice on October 15, 2002.



**G** On two occasions, through use of the bankruptcy process, fictional creditors tried to obtain control of the real property of an elderly man who had died. By filing an involuntary Chapter 7 petition against the deceased man and his estate, the "creditors" hoped to stay foreclosure proceedings, gain title to the property, and abscond with the proceeds of either a sale or a loan. In the first case, the false creditors failed to use the correct SSN for the deceased "debtor," and Judge Greenwald dismissed the case when they failed to respond to an Order to Show Cause. At the time of the second filing, the "creditors" representative applied to become the administrator of the estate in probate court. After investigating and interviewing witnesses to the scheme, the U. S. Trustee argued to the Bankruptcy Court that the probate estate of a deceased person does not qualify for Chapter 7 bankruptcy, and Judge Greenwald dismissed the case. The probate application was denied as well.

**G** On April 16, 2002, Thomas R. Reyes, with the assistance of counsel, filed a voluntary Chapter 7 petition seeking to discharge \$39,000 of unsecured debt. The U.S. Trustee received information that a petition with the same case number, but also listing Rita B. Reyes as a joint filer, had been delivered to the Orange County Sheriff's Court Services in order to stop a garnishment on the wife's wages. Thomas had not listed Rita on his April 16th bankruptcy filing. The U.S. Trustee also learned that Mr. and Mrs. Reyes had filed five other bankruptcies, which Thomas failed to disclose in his current filing. The U.S. Trustee filed a motion to vacate the discharge order and requested dismissal with prejudice. The debtor did not respond to the motion and the case was dismissed with prejudice on September 25, 2002.

Meanwhile, Rita Reyes filed a Chapter 7 petition on August 26, 2002. She also failed to disclose the five previous bankruptcy filings. The U.S. Trustee brought a motion to dismiss Reyes' case with prejudice and the Court granted the motion.

## CHAPTER 11 CASES



**!** Judge Greenwald denied Continental Communities Construction Co.'s supplemental application to employ a law firm to represent the debtor's president and 100% shareholder in a state court action and also to represent certain affiliates of a related debtor. The law firm was already employed as debtor's general bankruptcy counsel. The Court indicated that such additional representations would create a conflict and ordered the firm to represent only one of the four related entities.

**!** John Gordon Jones, a Los Angeles computer executive, was acquitted in July 2001 of criminal charges arising from complaints by nine women alleging that Jones gave them the date-rape drug GHB, lured them from Hollywood Clubs to his home, and raped them. Despite the acquittal, one of the civil suits filed resulted in a \$5.2 million default judgment against Jones because of severe discovery violations by Jones' defense team, which included numerous misrepresentations.

Jones appealed this judgment and filed a Chapter 11 bankruptcy, claiming he was unable to pay the bond pending the appeal. The judgment creditor filed a motion to dismiss joined by the U.S. Trustee. The motion cited incidents in which Jones failed to cooperate with the U.S. Trustee's investigation into Jones' assets, which included approximately \$4 million of assets transferred into a family trust, and \$325,000 transferred into a Cooks Island trust in the South Pacific. The U.S. Bankruptcy Court dismissed Jones' bankruptcy with a one-year bar from refiling, finding Jones acted in bad faith.

**!** In the case of Superior National Insurance Group, the applications for attorneys' fees reflected increases in the individual attorneys' rates in a range from 39% to 57% since the inception of the case. Debtor's counsel argued that the firm was only a "regional" firm when hired and then became a "national" firm. The Court found that a debtor should not have to pay for a law firm's growth, especially



when the firm was hired at the lower hourly rates. Judge Mund limited the increase in the hourly billing rate of the partners of both debtors' counsel and the creditors' committee counsel to no more than 15% since the inception of the case. The Court accordingly denied \$76,091 in attorneys' fees, although it did award a 10% bonus to debtors' counsel for their excellent work. Similarly, in the case of Bugle Boy, Judge Mund also denied \$6,386 in attorneys' fees, limiting the billing rates to no more than 15% of the hourly rate charged at the beginning of the case.

! The Equus Rescue and Sanctuary case involved a non-profit horse rescue organization that was grossly mismanaged, leaving approximately 400 animals at risk. An examiner found, among other deficiencies: (1) deficient employment practices, (2) insufficient documentation of debts, (3) insufficient individual donation records, (4) deficient bankruptcy reporting, (5) deficient reports to the IRS, and (6) sales tax misrepresentations. The debtor also failed to comply with the U.S. Trustee's Notices and Guides, including failure to provide proper proof of workers' compensation insurance. However, as the animals would languish if returned to the debtor, Judge Mund was loath to dismiss the case. Chapter 11 Trustee Nancy Zamora and the Woodland Hills U.S. Trustee Office worked together to ensure that the animals received proper care, the premises and the employment practices were brought up to code, and the operation was transferred to another non-profit rescue organization.

## CRIMINAL CASES



### Indictments

On November 20, 2002, Robert D. Pryce, Jr., an attorney who served as a Chapter 7 Panel Trustee, was named in a 32-count indictment accusing him of taking payments from a real estate company and from a contractor who made repairs at properties that were part of bankruptcy estates under his management. The indictment accused him of defrauding the U. S. Bankruptcy Court, the United

States Trustee and parties interested in the honest handling of bankruptcy proceedings. The indictment alleged that Pryce entered into an agreement with a real estate agent to sell properties from various estates over which Pryce was a trustee. The agreement included the hire of Pryce's daughter and payment to her of one-half of the commissions generated by the sale of the properties. During a three-year period that began in May 1999, the agent paid Pryce's daughter in excess of \$310,000 in commissions from the sales of those properties. She, in turn, is accused of passing more than \$130,000 of the proceeds on to Pryce.

Pryce was also accused of taking kickbacks from Scorza and Sons Construction Services in exchange for giving the company work on various properties that were part of the bankruptcy estates under his management. On two known projects, Scorza and Sons was paid approximately \$1.3 million, of which approximately \$170,000 was kicked back to Pryce. The indictment also charged Pryce with requiring Scorza and Sons to perform free repairs at his home and the homes of his mother and daughter.

In a second indictment, Pryce is accused of participating in a scheme to pay bribes to elected officials in the City of Carson in exchange for their votes to award a trash-hauling contract to BFI, a waste disposal firm, in exchange for payment of approximately \$600,000 by BFI to be split among defendant Pryce and the public officials.

In response to the indictments, United States Trustee Maureen Tighe said, "The integrity of our trustees is essential to fair and credible bankruptcy administration. This is the first time a bankruptcy trustee has been indicted in this District, and the allegations in the indictment, if proven, would constitute one of the most egregious frauds committed on the bankruptcy system in this District's history."

### Convictions

Juan Carlos Ciraolo pled guilty to bankruptcy fraud, mail fraud, money laundering, and health care fraud on October 7, 2002. Ciraolo, 59 of Rancho Palos



Verdes, made several false statements in bankruptcy. He claimed monthly combined income with his wife of \$4,065, although he received an additional \$17,960 in the month preceding his filing of bankruptcy. He also failed to disclose his position as officer as well as shareholder of a corporation. Maurice Suh and FBI Special Agents Peter Norell and Lisa Jangaard along with IRS Special Agent Carlos Torres were the team on this case.

## TRUSTEE PROFILE

Profile of Sandra McBeth (formerly Sandra Fahey)  
By Wendy Carole Sadovnick



Sandra McBeth is one of those rare individuals who was born, educated, married, and began her practice of law, all within her home state of California.

In her teens, Sandra became fascinated with the law, and knew that she would eventually practice as an attorney. First and foremost, however, she was an athlete and all around sports enthusiast. Sandra began playing volleyball in high school and continued with the sport during her undergraduate studies at Cal Poly San Luis Obispo. She enjoyed crisscrossing the country for competitions while a student on the team. Following her college years, Sandra played for the United States as well as professionally.

While she was participating in volleyball at Cal Poly, fate intervened and Sandra met her future employer, David Farmer. David was an avid supporter of the volleyball team and an attorney with a burgeoning practice in San Luis Obispo. Sandra kept in contact with David while attending the University of San Diego Law School. Within two weeks of taking the Bar in 1988, Sandra moved to San Luis Obispo and took the position of clerk for the Farmer and Ready law firm. After passing the Bar, she became an associate and then a principal of the firm.

Although Sandra had taken a bankruptcy class during law school, she was more interested in estate planning and tax issues. While her professional acumen in bankruptcy and its tangential tax issues have kept her occupied over the years, Sandra has not ruled out finding time to pursue her interest in estate planning.

For now, Sandra finds her colleagues in the bankruptcy bar "a great group of people" and thoroughly enjoys her profession. She says she

finds trustee work satisfying because it touches on so many areas of the law.

The financial security of working in an established law firm had always appealed to Sandra. However, after having children, she decided she needed the flexibility that only comes with being her own boss. In 1999, Sandra finally made the decision to fly solo by opening her own practice. Now, family vacations are an important priority in her life and the annual trip to the Colorado mountains is just the place for her to kick back and relax from her active practice and daily routine at home.

One of Sandra's most bizarre cases involved gun toting Carmelite Nuns between the ages of 50 through 80. They had taken up arms to try to preserve their rights to the real property on which they had begun building a monastery. However, the nuns encountered problems funding the building project. Contractors were not paid for work already done, approval for this project from the diocese had not been secured, and the ownership of the property was in dispute. Sadly, the order was disbanded and the Carmelites had to vacate the land after exhausting all appeals.

Describing herself as an eternal optimist, Sandra attempts to forge understandings without preconceived judgments. While she concedes that the bankruptcy system could be improved, she only occasionally sees any outright abuse from professionals or debtors within her area of practice. However, Sandra personally believes that petition preparers do not always help pro per debtors as they cannot advise them of their rights and duties, especially in situations involving the dissolution of marriage.



As a solo practitioner with just a few employees, Sandra is able to give her full attention to her cases and personally compiles the Trustee Final Reports.

Firmly settled in the San Luis Obispo area and newly married with an enlarged family, Sandra foresees herself continuing with her trustee practice in the same wonderful place for many years to come.

## U.S. TRUSTEE EMPLOYEES HONORED

### Director's Awards

On October 30, 2002, Lawrence A. Friedman, Director of the Executive Office for United States

Trustees, personally presented the Director's Special Commendation for Exceptional Achievement in Civil Enforcement to the Santa Ana Office of the U.S. Trustee. As stated by Director Friedman in the announcement of the award, "[t]he Santa Ana office has a tradition of excellence in civil enforcement that goes back many years." The award was based in part on the success of the Santa Ana office in targeting abusive filings. For the six-month period from April 1, 2002, to September 30, 2002, the total unscheduled debt not discharged in the Santa Ana Division as a result of Section 707(a), 707(b), and 727 actions initiated by the Santa Ana office totaled \$2,623,193.





The Director periodically presents awards in various categories to certain employees in recognition of their superior performance and service to the U.S. Trustee Program. The following employees from the Central District of California received awards at the Director's 5th National Awards Ceremony held in Santa Monica, California on November 21, 2002.

#### Director's Award for Customer Service

Marjorie K. Gibson, Bankruptcy Analyst  
S. Margaux Ross, Trial Attorney

#### Director's Award for Achievements in Diversity

Gary B. Baddin, Bankruptcy Analyst  
Christine M. Cartwright, Fraud Coordinator  
Russell S. Clementson, Trial Attorney  
Dare Law, Trial Attorney

#### Director's Award for the Prevention of Fraud & Abuse

Marilyn S. Sorensen, Bankruptcy Analyst

#### Silver Medalist



Ron Maroko, Trial Attorney for the Office of the U.S. Trustee, received a Silver Medal for scoring exceptionally high on the Certified Insolvency and Restructuring Advisors examination. Each year, the firm of Zolfo Cooper LLC underwrites the Zolfo Cooper/Randy Waits award program in memory of Randy J. Waits, who passed

away in August 1994.

Randy was a Zolfo Cooper senior manager, an AIRA Vice President, director, and instructor as well as an instrumental proponent in the CIRA program.

The prestigious awards of Gold, Silver, and Bronze are presented yearly at AIRA's annual conference. The recipients are those individuals with the three highest CIRA examination scores. Congratulations Ron for your Silver Medal!!

## COMMUNITY OUTREACH AND EDUCATION PROGRAMS



### Consumer Debtor Education Brown Bag Meetings

We have received such positive feedback from our consumer attorney brown bag educational meetings that we are continuing the program in 2003. The first three meetings of the year are:

January 24 - How to Prepare a Chapter 13 Plan: The Basics.

Speaker: Amrane Cohen, Chapter 13 Trustee

February 25 - Brown Bag with the United States Trustee – Open Discussion of Consumer Bankruptcy Issues.

Speaker: Maureen A. Tighe, U.S. Trustee

March 25 - The Debtor I.D. Initiative --Using the Right Name and Social Security Number on the Petition.

Speakers: Russell Clementson, Trial Attorney,  
Office of U.S. Trustee;  
Timothy Yoo, Chapter 7 Trustee

The meetings are free and take place from 12 noon to 1:00 p.m. at 725 South Figueroa Street, Los Angeles in § 341(a) meeting room #101 on the ground floor. All programs qualify for one hour of MCLE credit to the participants.

### Bankruptcy Petition Preparer Guidelines

In the fall, the United States Trustee held informational sessions at each U.S. Trustee office in the Central District on the newly-issued Bankruptcy Petition Preparer Guidelines that took effect September 3, 2002. The sessions detailed how a bankruptcy petition preparer can comply with 11 U.S.C. § 110 and applicable state law.



### **Civil Enforcement**

On August 9, 2002, Assistant U.S. Trustee Jennifer Braun and Bankruptcy Analyst Dennis Strayhan, with preparation and support provided by Trial Attorney Brian Fittipaldi, participated in a seminar for the California, Santa Barbara County, and Ventura County Bar Associations, presenting information on the Civil Enforcement Initiative and recent developments in the United States Trustee Program.

On August 28, 2002, Trial Attorney MaryAnne Wilsbacher spoke to the San Fernando Valley Bar Association on the topic of civil enforcement and § 707(b) motions.

### **"The Money Game"**

Bankruptcy Analyst Jessee Warren taught a two-hour workshop for the Pomona Unified School District's Adult and Career Education Program entitled Creating Financial Lifestyle Strategies, a.k.a. "The Money Game."

### **Trial Attorneys Attend UCLA Government Reception and Information Fair**

On November 13, 2002, Trial Attorneys Ron Maroko and Russ Clementson attended the Seventh Annual Government Reception and Information Fair hosted by UCLA Law School. The event is designed to give law students information about career opportunities with a variety of government agencies. Ron and Russ provided a number of interested students with information about the U.S. Trustee's summer legal intern program and discussed the U.S. Trustee's watchdog role in bankruptcy cases. Students were also provided with copies of the United States Trustee Program's Annual Report of Significant Accomplishments for Fiscal Year 2001.

### **Identity Theft Seminar for Consumers**

On September 20, 2002, Maggie Reyes-Bordeaux, Staff Attorney for Public Counsel, and Christine Cartwright, Fraud Coordinator with the Office of the U.S. Trustee, spoke at the Los Angeles Free Clinic's Consumer Workshop. Their topic on

identity theft quickly peaked the audience's attention as several individuals either personally had their identities stolen or knew close friends or relatives who were victims.

### **Local, State and Federal Prosecution of Identity Theft**

On October 9, 2002, Sandy Klein, Special Assistant U.S. Attorney for the Office of the U.S. Trustee, coordinated and participated in an Identity Theft Seminar sponsored by the U.S. Attorney's Office. The seminar was held at the New Otani Hotel and attended by more than 300 federal, state, and local law enforcement agents. The Seminar addressed cutting edge topics, such as: Internet fraud, how social security numbers are used by identity thieves, and how to identify counterfeit documents. The attendees also learned about identity theft task forces in the Central District and how identity theft cases are prosecuted at various levels of government.

### **"Dear Sherlock:"**

(A column for fraud-fighters seeking advice)



I am an attorney in a United States Trustee's Office and read the Watchdog to learn of the latest creative uses of the bankruptcy system in your District. It seems that we have an epidemic of serial filers here. Since many creditors, both secured and unsecured, trustees, the Court, and the U.S. Trustee are affected by this abuse of the system, what type of remedies are available for the aggrieved parties?

Signed,

Chasing Serial Filers

### **Dear Chasing Serial Filers,**

By way of introduction, for those readers who do not know what a serial filer case is, it is simply the sequential or overlapping filing of bankruptcy cases by one or more debtors. Serial filers use the bankruptcy system in an attempt to delay foreclosures, evictions, seizure of assets, wage garnishments, and stay lawsuits, to name a few.



Your inquiry was sent to other Sherlocks around the country to determine how widespread the problem of serial filing actually is, and to also inquire about various remedies used to combat this abuse.

Sherlock from Sacramento, California reports that the Serial Filers' problem exists in Chapter 7 and Chapter 13 cases. Due to aggressive action taken by the U.S. Trustee's Office and coordination with the Chapter 7 Panel of Trustees and Chapter 13 Standing Trustees, many debtors think twice before refiling a case there. The Sacramento office files motions to dismiss with prejudice, and under appropriate circumstances requests that the Court annul the automatic stay back to the date the case was filed. In one particular egregious case in which a debtor filed 15 times, the U.S. Trustee was successful in obtaining an injunction banning this debtor from filing another bankruptcy case for ten years without prior approval of the Court.

Sherlock from Austin, Texas opines that if a foreclosure or eviction is involved, it is sometimes better not to dismiss the case but to coordinate with the secured creditor or landlord. This can assist creditors in obtaining relief from the automatic stay. One twist on this remedy is to obtain a bar to dismissal until after the creditor has been able to foreclose or evict the debtor. In a Chapter 13 case in which the right to dismiss may be automatic, the bar to dismissal aids the aggrieved party in its pursuit of the property. With this Texas philosophy, sometimes you have to shoot a few strays to keep the herd moving in the right direction.

Sherlock from Los Angeles, California has used a variety of methods to address the serial filing problem in the Central District. Using an escalating theory of responses, a simple motion to dismiss may be appropriate. For serious abuse cases, injunctive relief and monetary sanctions have also been sought with success. Many judges in this district will sign an Order to Show Cause which requires the offending debtor or debtors to personally appear in court. Since many serial filers do not appear for the § 341(a) meeting of creditors, a court order often gets their attention. The beauty of this process is that if the debtor fails to appear at the court hearing, the Court can flex its contempt powers.

Sherlock from Washington, D.C. uses all of the remedies discussed above, as well as seeking monetary sanctions against counsel if the debtor has used an attorney to carry out the filing scheme. Coming from the land of "winks and nods," any attorney undertaking the representation of a debtor who has previously filed a bankruptcy case should proceed with caution. An inquiry of all previous cases filed by the debtor or related debtors or entities should be made.

This Sherlock hopes that these insights will assist you in bringing the "chase" being pursued in your office to a halt. Thanks for reading the Watchdog and writing in with your issue.

Signed,

**Sherlock**

Riverside, California

Please e-mail your inquiries regarding fraud and abuse issues to Sherlock, c/o: Marjorie.Gibson@usdoj.gov.

~~~~~

The Watchdog is issued by the Office of the U.S. Trustee, located at:

Ernst & Young Plaza  
725 S. Figueroa Street, Suite 2600  
Los Angeles, CA 90017  
Tel: (213) 894-6811  
Fax: (213) 894-6778

Editors: Christine M. Cartwright  
Marjorie K. Gibson